

1203.1 Board of adjustment.

1203.1-1 ***Creation.*** There shall be and hereby is created a board of adjustment, (hereinafter called the "board") consisting of three (3) members. The members of the board shall be appointed by the mayor with the approval of the council for a term of three (3) years and may be removed only for cause upon written charges and after public hearing. The members of the board serving on the effective date of this ordinance, under a zoning ordinance effective prior hereto, shall be and constitute the first board hereunder and each member thereof shall serve the balance of the term to which he was appointed. Any vacancy which occurs in the board shall be filled by the mayor with the approval of the council for the unexpired term of any member whose term became vacant. No member of the board shall be on the staff of the city or be employed in or by the planning commission.

1203.1-2 ***Rules for proceedings before board.*** The board shall adopt rules governing all proceedings before it. Such rules shall provide and require that:

- a. Public notice shall be given of all hearings and all hearings shall be open to the public ;
- b. Due notice of all hearings shall be given to parties in interest in writing and to the planning commission which commission shall be permitted to intervene, for and on behalf of the municipality, in all public hearings;
- c. At any public hearing a representative of the commission and any other interested party may appear in person or by agent or by attorney, offer evidence and testimony and cross-examine witnesses ;
- d. All witnesses shall be sworn or shall affirm their testimony in the manner required in courts of record ;
- e. All evidence and testimony shall be presented publicly. The board may take judicial notice of facts to the same extent and in the same manner as courts of record and may consider any relevant facts within the personal knowledge of any member. For each case or matter heard, the board shall cause a record of its proceedings to be prepared. The record of proceedings shall include all documents and physical evidence considered in the case together with a transcribed stenographic record of all public proceedings. The transcribed stenographic record shall include, but need not be limited to, the verbatim testimony offered by all witnesses in the case and all personal knowledge of members of the board considered by the board in reaching its decision. The record of proceedings shall not include the deliberations or discussions of the board at private or executive sessions but shall show the grounds for each decision and the vote of each member upon each question, or, if absent or failing to vote, shall indicate such fact. The record of proceedings shall be filed immediately in the office of the board and shall be a public record.

1203.1-3 ***Powers of the board.*** Subject to the limitations enumerated herein, the board shall have and exercise the following powers; the board may reverse or affirm, wholly or partly or may modify the order, requirements, decision or determination appealed from and may make such order, requirements, decision or determination as ought to be made and, to that end, shall have all of the powers of the officer or department from whom the appeal is taken;

1203.1-3.1 ***Administrative review.*** To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this ordinance.

1209.1-3.2 ***Variances.*** To authorize, upon appeal in specific cases, such variance from the terms of this ordinance, subject to terms, and conditions fixed by the board, as will not be contrary to the public interest where, owing to exceptional and extraordinary circumstances, literal enforcement of the provisions of this ordinance will result in unnecessary hardship; provided, however, that no variance shall be authorized unless the board shall find that all of the following conditions exist:

- a. That the variance will not authorize the operation of a use other than those uses specifically enumerated as permitted uses for the district in which is located the property for which the variance is sought;
- b. That the development or use of the property for which the variance is sought, if limited by a literal enforcement of the provisions of this ordinance, cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district;
- c. That the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, that the unique circumstances were not created by the owner of the property and are not due to or the result of general conditions in the district in which the property is located;
- d. That the variance will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;
- e. That the variance will not alter the essential character of the district in which it is located the property for which the variance is sought;
- f. That the variance will not weaken the general purposes of this ordinance or the regulations herein established for the specific district;
- g. That the variance will be in harmony with the spirit and purposes of this ordinance;
- h. That the variance will not adversely affect the public health, safety or general welfare.

1203.1-8.8 ***Exceptions.*** To authorize, upon appeal in specific cases, such exceptions from the terms of this ordinance, subject to terms and conditions fixed by the board, as will permit qualified applicants to initiate and complete construction in accordance with definite formalized site plans (no portion of said plans having been constructed) or to initiate and complete the construction of additional structures in accordance with an existing major structure or structures. Every exception authorized hereunder shall be personal to the applicant therefor and shall not be transferable, shall run with the land only after the construction of the authorized structure or structures and only for the life of such structure or structures. No exception shall be authorized hereunder unless the board shall find that all of the following conditions exist:

- a. That the exception will not authorize the operation of a use other than those uses specifically enumerated as permitted uses for the district in which is located the property for which the exception is sought ;
- b. That the applicant is a public utility or a non-profit community facility providing a service but not a commodity and is acting through its executive management or governing authority;
- c. That the full development is designed and intended .to serve the district in which the development is sought to be operated and maintained;
- d. That the full development is necessary and desirable to provide a service or a facility which would contribute to the general well-being of the district in which the development is sought to be operated and maintained;
- e. That the exception is essential to maintain the functional design and architectural integrity of the development;
- f. That the exception will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;
- g. That the exception will not alter the essential character of the district in which is located the property for which the exception is sought;
- h. That the exception will not weaken the general purposes of this ordinance or the regulations herein established for the specific district;
- i. That the exception will be in harmony with the spirit and purposes of this ordinance;
- j. That the exception will not adversely affect the public health, safety or general welfare.

1203.1-3.4 ***Oaths and attendance of witnesses.*** For the purpose of exercising the powers herein enumerated, the board shall elect a chairman and vice-chairman. The chairman, or in his absence, the vice-chairman, shall administer oaths to or accept affirmations from witnesses and may compel the attendance of witnesses. A failure or a refusal to appear in response to a subpoena issued by the board shall constitute a violation of this ordinance.

1203.1-4 *Limitations on powers of board.*

1203.1-4.1 *Concurring vote required.* The concurring vote of two members of the board shall be necessary to reverse any order, requirements, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass under this ordinance or to effect any variation in this ordinance.

1203.1-4.2 *Findings of fact.* Every decision of the board shall be based upon findings of fact and every finding of fact shall be supported in the record of its proceedings. The enumerated conditions required to exist on any matter upon which the board is required to pass under this ordinance or to effect any variation in this ordinance shall be constructed as limitations on the power of the board to act. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific facts shall not be deemed findings of fact and shall not be deemed compliance with the ordinance.

1203.1-4.3 *Powers strictly construed.* Nothing hereincontained shall be construed to empower the board to change the terms of this ordinance, to effect changes in the official map or to add to the specific uses permitted in any district. The powers of the board shall be so construed that this ordinance and the official map are strictly enforced.

Appeals from the board.

1203.1-5.1 *Procedure.* Any person aggrieved, any taxpayer, the municipality or any officer or department of the municipality may have a decision of the board reviewed in the manner provided by rules relating to civil proceedings. No such review shall be granted unless, a petition therefor, duly verified, setting forth that such decision is illegal, in whole or part, and specifying the grounds of the illegality, is presented to a court of record within thirty (30) days after the filing of the decision in the office of the board. The board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or, sworn copies thereof or such portions thereof as may be called for. The return shall concisely set forth such other facts as may be pertinent and material to the decision appealed from and shall be verified.

1203.1-5.2 *Effect of appeal.* The issuance of a writ on a petition hereunder shall not stay proceedings upon the decision appealed from but the court, on application after notice to the board and on due cause shown, may grant restraining order.

1203.1-6 *Liability.* Any commissioner, or employee, or member of the board of adjustment, charged with the enforcement of this Code, acting for the city in the discharge of his duties, shall not thereby render himself liable personally, and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties. Any suit brought against any commissioner, or employee, or member of board of adjustment,

because of such act performed by him in the enforcement of any provision of this Code shall be defended by legal representative until the final termination of the proceedings.